Douglas R. Dollinger, Esq., NY Bar No. 2354926
Appearing *Pro Hac Vice*
50 Main Street-Suite 1000
White Plains, New York 10606
Tel: 845.915.6800
Fax: 845.915.6801
E-mail: ddollingeresq@gmail.com
Attorney for Plaintiffs

Seth D. Heyman, Esq., CA Bar No. 194120
2600 Michelson Drive, Suite 900
Irvine, CA 92612
Tel: 855-439-6628
Fax: 855-207-3967
E-mail: sdh@heymanlegal.com
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Indiezone, Inc., a Delaware corporation, and EoBuy, Limited an Irish private limited company,

Plaintiffs,

vs.

Todd Rooke, Joe Rogness, Phil Hazel, Sam Ashkar, Holly Oliver and U.S. Bank, collectively the ***RICO Defendants***; Jingit LLC., Jingit Holdings LLC., Jingit Financial, Services LLC., Music. Me, LLC., Tony Abena, John E. Fleming, Dan Frawley, Dave Moorehouse II, Chris Ohlsen, Justin James, Shannon Davis, Chris Karls in their capacities as officers, agents and/or employees of the Jingit LLC., ***Defendants in Negligence, and Aiding/Abetting;***

Wal-Mart, General Electric, Target, DOE(s) and ROE(s) 1 through 10, ***Defendants in Negligence Secondary -Vicarious Infringement,***

Defendants.

Case No. CV13-04280 VC

MOVANTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION

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Preliminary Statement

In Reply to the Defendants arguments the record supports the facts as movants claim them to be in 2008, not what Defendants' Counsel has worked them into by reason of their withholding e-mails, use of fabricated testimony or their lack of any statements containing personal knowledge of the facts which would contradict CEO Fennelly's claims and the facts appearing on the face of the filings.

Indiezone, eoBuy and their Counsel are requesting reconsideration of both the facts and law with an amendment to the judgment restoring the action, adding eoBuy Licensing Ltd. as a party, directing the parties to arbitration and denying the award of sanctions. **[DE 145.]**

Reconsideration and granting an amendment to the judgment are particularly appropriate in this case because Counsel's strategies and the Court's decision was based on defense counsel's actual use of admitted perjured testimony presented through Barrister Brian Walker. **[DE 150-2.]**

The decision and judgment have had a far reaching impact on the loss of income to Indiezone's and eoBuy Licensing's shareholders not on the merits of their claims but summarily on misapprehended facts and the law.[1] Likewise is the effect to counsel's law practice. Forcing the matter to appeal based on admittedly false testimony is an injustice uncalled for and represents manifest errors of law and fact and will result manifest injustice to movants.

The testimony was not just a simple misinterpretation of the facts its effect was core to the reliance in the strategy and avenue of cross-examination employed by Counsel and the clear errors in fact and law produced in the findings made by the Court.

The Court's decision was necessarily based on this false testimony for the reason that is findings was interwoven into the global theme of claimed wrongdoing by CEO Fennelly and Counsel. Moreover, the reasoning cannot be separated out from the overall analysis set forth in the Court's order without severely prejudicing the movants. **[DE 145.]**

The findings rely on testimony which was not only speculative but grudgingly conceded to be false. Not too surprisingly Defendants now seek to distance themselves from their wrongdoing pointing to what they argue was the Court's findings which they claim survive despite the admitted false testimony of Barrister Walker. **[DE 150.]**

[1] The loss is estimated to be in the billions of dollars for the infringed **IP** as illegally taken by the Defendants.

In Response to the motion Defendants claim that the movants have not met their burden for reconsideration as the proof of ownership of the Intellectual Property ("**IP**") and its transfer assignments from eoBuy Limited to Amdex Pte. (Amdex") in 2007 and then into eoBuy Licensing Ltd. f/k/a Laraghcon Chauffeur Drive Limited ("Laraghcon") in 2008 does not constitute new evidence, nor would it have changed the outcome of the case. Similarly rejected are the statements of Mr. Conar Kennedy information officer of the Irish Corporation Registry Office ("CRO") as superseded by Mr. Harry Lester Assistant Registrar for the CRO and their non-effect as well. **[DE 149-4 and 150.]**

By tactical avoidance of the admitted perjury committed by Barrister Brian Walker and by recasting questions present to the CRO by movants post the hearing defendants address the matters as having no impact on the outcome of the issues before the Court.

The Court should reject the defendant arguments as being unpersuasive and find Barrister Walker's testimony has resulted in manifest injustice to movants for the reasons to follow.

Point I.
Movants Have Met the Standard for Amending the Judgment on Reconsideration of Both the Facts and Law

Notwithstanding defendants' claims, the facts and law of the stated grounds for amendment exist in this case and this Court has the power to amend the judgment upon reconsideration. **[DE 150.]**

A motion to reconsider under Rule 59(e) should be granted to correct a clear error, whether of law or of fact.[2] Indeed, Rule 59(e) exists for the very reason; to prevent manifest injustice especially in cases like this where evidence offered was untrue and when evidence favorable to an effected party is not available to them at the time necessary to address the matter.

The Ninth Circuit has noted:

> In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law. [3]

[2] *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996).

[3] *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011), and see Point III below.

At least three of the four grounds for reconsideration provided for under Rule 59(e) are present in this case and Defendants have failed to address them in the Response or rely on the tender of false reasoning associated with the untrue testimony of Barrister Walker.

Movants claim that upholding the judgment on the admitted-recanted testimony of Barrister Walker promotes manifest injustice for the reason that testimony was intended to create the false factual impression that the CRO operated in a manner that provided certain notices to the public which should have been present had CEO Fennelly acted as he claimed; that the CRO has enforcement powers under Irish law which it does not have a fact admitted to by Mr. Lester ; that evidence which was not available to them previously[4] is now available and; that granting reconsideration after consideration of that evidence will correct clear error of fact[5] and law where this Court should correct these errors in order to "preserve the integrity of the final judgment."[6]

And, even if as defendants argue there is no new evidence before the Court regardless, of the claimed errors, as the Ninth Circuit explained in Herron, a court "considering a Rule 59(e) motion is not limited merely to [the four "basic grounds" upon which a Rule 59(e) motion may be granted]," but may consider whether an amendment "may be appropriate" under other circumstances.[7]

Point II.

The Conceded Errors in Testimony of Barrister Brian Walker Cannot be Overcome by Being Ignore as they Were Prejudicial to Plaintiff

Admittedly, part of the errors claimed before the Court were the result of poorly drafted declarations. However, these errors must be placed second behind the pretense and charade presented to the Court in the *concededly inaccurate testimony* of Barrister Walker concerning the operations and authority of the CRO against the information provided to Counsel by Mr. Kennedy

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[4] Defendants' response only supports how difficult it has been to accurately present the true facts in this case. The withholding of over 20,000 e-mails has had the desired effect.

[5] eoBuy Licensing Ltd. and Attorney Dollinger argue that the Court misconstrued the declaration of Conor Fennelly for the reason that they were poorly drawn. This constitutes "error of fact" within the meaning of Rule 59(e). District courts may treat such claims of misinterpretation as error of fact. See, e.g., *Indep. Trust Corp. v. Stewart Info. Servs. Corp.*, No. 10-cv-4430, 2011 WL 1831586, at *3-4 (N.D. Ill. May 11, 2011).

[6] *Turkmani v. Republic of Bolivia*, 273 F. Supp. 2d 45, 50 (D.D.C. 2002).

[7] Herron, 634 F.3d at 1111.

on September 16, 2014, realigned through the responses of September 18, 2014, solicited of Mr. Lester by defendants. **[DE 150-1.]**

The Court never granted Barrister Walker expert witness status describing his testimony as percipient testimony. **[DE 140-1 p 21 at 11-17.]** Had the Court done so, the witnesses would have been tested in the capacity of an expert by Counsel. Moreover, during Barrister Walker's testimony he asserted his claimed knowledge in the form of opinion as an attorney familiar with the filing protocols of the CRO. Under the circumstances which have now come to light the testimony of Barrister Walker as orchestrated by Attorney Sugisaka must be rejected as knowingly unfounded opinions riddled with wild speculation and even perjured testimony. **[DE 150.]**

For instance, beyond the admission of his error to CRO public notices used to establish the intent to CEO Fennelly to deceive the Court is his opinion on listed assets and designation of Amdex as a parent holding company. The questions and answers are all telling. It was not the law, only his opinion as to what assets would or should be disclosed to the CRO. **[DE 140-1 p 32 at 23-25 and 33 at 1-4.]**

Where did this all come from? Where is this stated in any document presented by movants that Amdex was a formal "parent" holding company" of eoBuy Limited in 2006? It was never presented in such a manner, at least not in the filing presented by movants.

What was stated and as presented in the **IP** transfer agreements was that the **IP** was transferred into its holding company, Amdex in November 2007. Most importantly the declaration of CEO Fennelly never advances a theory of a "parent holding company" or any claim related to defendants in 2006**. [DE 54-1 and 84-3.]** There is a distinct difference between a parent company wholly owning a holding company established as a subsidiary directly holding company assets and using a shell company to hold assets.

The theme presented throughout the defendants handling of this matter has been consistent. Defendants take speculative leaps advancing facts not in the record but only found upon their own mischievous interpretation and rearrangement of the facts and law in this case.

To show just how far reaching Defendants' efforts are to distort the truth of the matters before the Court beyond the foregoing, the Court simply need examine the theme of just a couple of the arguments presented through the Defendants' hearing testimony and advanced in their Memorandum of Law. **[DE 150.]**

First, are the statements made in their Memorandum of Law.**[De 150 p 10 at 8-18.]** These statements are a complete fabrication. Exhibits "A" and "B" correctly identify in each instance that eoBuy Limited as transferor was a company formed under the laws of Ireland; that Amdex Pte as transferor and transferee was a company formed under the laws of Singapore and that eoBuy Ventures Ltd. as the name was believed to be at the time, as transferee was a company formed under the laws of Ireland. *Was this intentional on the part of defense counsel intending to place movants in a false light or was it perhaps a simple mistake one in which a professional would avoid any attempt to capitalized and improperly mislead the Court.*

And, even more persuasive is the unsupported claim of Attorney Sugisaka that the **IP** referenced in the Complaint is not the same as the **IP** referenced in the Transfer Agreements. **HOW DOES SHE AND HOW CAN SHE KNOW** what the **IP** codes consists of.

Far worse of the truth is the fact that the documents used by Barrister Walker and as testified to during the hearing to exclude or create doubt as to the asset transfer and the nonexistence of the **IP** theft are his use of filed returns **from 2005-2007** representing the year **2004-2006** a period at least two (2) years prior to the development of the **IP** and theft as claimed against Rooke, Rogness and the other Jingit defendants.

This Court should keep in mind that defense Counsel Sugisaka, through her firm has represented Rooke, Rogness and most of the other Jingit Defendants at critical times after the claimed **IP** theft. **[DE 140-1** and **DE 150.]**

And, it is a fact that the Jingit defense firm assisted in many of the filings which are claimed to support the theft of Plaintiffs' **IP**. The lack of supporting declarations from any party defendant only enhances the truth of CEO Fennelly's claims.

The outright misrepresentations as to the formation asset information of each corporation and attempted capitalization of the obvious error and the utter claim of facts which are outside Counsel's own knowledge, or perhaps they are not, only promotes the lengths defendants will stoop to so as to hide the illegalities presented in the Complaint and avoid this case being heard on its merits. Simply put, Barrister Walker's testimony was not only overreaching but clearly opinion testimony in error of both fact and law.

Mr. Walker attempted to use the CRO as an official body of government with enforcement powers as opposed to an administrative content registry which is all that the CRO is. Mr. Lester's e-mail admits this fact and establishes this fact at the highest order confirming Counsel's point of argument and admitted testimony of Barrister Walker at the hearing that if a claim exists against the filings as made by eoBuy Licensing Ltd. the claim must be made before the Court of Ireland osa to determine the lawful status of eoBuy licensing.

This of course begs the question as to the Court's conclusion that the name change was fraudulent as filed with the CRO. Clearly, the Court was of the mistaken belief as supported by Barrister Walker's opinion testimony that under Irish law the filing was a fraud established-proven by the absence of filings or the backdating of the July 8, 2008, corporate resolution. [8] However, as intended the filings were nothing more than authorized corrections, without attended fraud as the filings themselves clearly establish. What is lacking is any action on the part of defendant to seek resolution of the claims in an Irish Court. This was not done for the simple reason as admitted by Barrister Walker eoBuy Licensing Ltd is validly formed and in existence under Irish Law. **[DE 140-1.]**

The false testimony by Barrister Walker that public notice of the name rejection would have been provided to CEO Fennelly was intentionally presented as a statement of fact in a direct question

[8] The Court is in error in its findings that the March 11, 2014 filing of the name eoBuy Licensing Ltd. and the Corporate resolution dated July 15, 2008- ***the date of adoption***-as fraudulent is in opposition with the filing of documents using G1, G2 and G1Q as public notice on March 13, 2014. The importance of the sequence of those filings and the dates on the documents themselves are all telling Despite the claimed corrections by Mr. Lester of Mr. Kennedy on this matter Mr. Lester's answers actually support that what Company Setup did was file a corporate resolution effective to the Company Laraghcon-eoBuy Licensing Ltd. from July 2008 forward. All the Court need do is recognize that even Mr. Lester admits the "effective date" for the CRO would be controlled by the flings of G1, G2 and G1Q with the filing made on March 11, 2014. The fact that the name change-resolution is dated July 15, 2008 as an act of fraud is entirely the result of misinformation testified to by Barrister Walker and the inference as to what the lack of filings mean with the CRO. On this very point Mr. Lester was unable to adopt defendants position as to whether CEO Fennelly "did anything wrong". This was the central factor in the theme presented by defendants claiming the CRO filings and the lack thereof were an intended fraud. What is even more important is that the implausibility of Barrister Walker's testimony as used in any support of a fraud becomes apparent. If as Barrister Walker opined the name change rejection would have been public whether in 2008 or 2014, and it was not among the public filings then for the reason of its absence CEO Fennelly must have been lying when he said that he had forgotten the name change was rejected means that CEO Fennelly could not have formed the intent to deceive anyone. He simply forgot something which had occurred six (6) years before. The e-mail from Mr. Lester and his reference to "prima facie evidence that certain filings [made in this matter] . . . . could have been queried related to the appointment of officer and member information; this point and the facts behind it and its implications are discussed in detail below. **[See Point IV below.]**

offered by Defense Counsel and could only have been known to be untrue when made. **[DE 140-1 p 39 at 7-10 .]** In fact, the assertion of simple error on the part of Barrister Walkers is so implausible that it could not have occurred by inadvertence or happenstance.

This testimony resulted in the Court's misunderstanding of the filing sequence and allowed defendants to improperly capitalize using the perjured testimony of Barrister Walker rejecting and transforming the correction into a fraud by reason of the falsely imposed knowledge of CEO Fennelly.[9]

Defense Counsel deliberately mixes a host of unrelated factors in her press to hinder the Court in its analysis as to why Barrister Walker testified falsely when she encouraged him to do so by asking the questions which improperly have this Court believing that the filings with the CRO had the force of law when in fact they did not. **[DE 140-1.]**

The result is an injustice which can only be undone by affording the relief requested for reconsideration. There was no intent to create a shame plaintiff and once the claimed public notice of the name rejections is eliminated the claimed fraudulent intent of CEO Fennelly equally disappears.

With this said hopefully it will become clear there was no intent to deceive the Court or defendants and the resulting errors of fact and law as drawn by the multiple errant factors produced by Defendants testimony and their documented mischief should be reconsidered in light of the factual right of standing belonging to eoBuy Licensing Ltd. and more importantly its ***lawful*** right of standing.

Point III.

The Court Inadvertently Overlooked the Facts and Law;
eoBuy Licensing Ltd. has Standing Under Fed R. Civ. P. 20(a)

By no means was it a simple error, however, the errors contained in CEO Fennelly's declaration were produced upon a compounded misunderstanding of the law concerning the 2013, viability of eoBuy Limited as a plaintiff and the creation of the agreements to transfer eoBuy Limited's intellectual property from eoBuy Limited to Amdex in 2007 and then into eoBuy

[9] Counsel is somewhat at a disadvantage trying to understand why the Court consistently believes that the questions posed by him at the hearing as suggestions of facts are adopted as attempted claims establishing a fact at the hearing as an act undertaken by CEO Fennelly. Counsel's job is to test the evidence on accuracy through inquiry which as was shown established the false statements and inferences offered by Barrister Walker by means of cross-examination. Unless arising from movants direct case Counsel was at all times testing the plausibility of the testimony not interposing facts which of course could not be accomplished through him .

Ventures Ltd. believed to be the substituted name for Laraghcon Chauffeur Drive Limited ("Laraghcon") in 2008 (collectively the "Transfer Agreements"). **[DE 57-1 Page3 ¶2, DE 145.]**

The February 2014 name substitution adopted by CEO Fennelly, eoBuy Licensing Ltd., after being told by Company Setup the company dealing with the CRO in February 2014 the name eoBuy Ventures Ltd. was rejected by the CRO was done without first consulting with Counsel.[10]

The filings reflect what CEO Fennelly was told to do by Company Setup in correcting the filing errors caused by the failure of Private Research Company, a defunct company who originally incorporated the entity in 2008.

Likewise, they reflect why the Rule 20(a) application was for a name correction to eoBuy Ventures Ltd. and not initially eoBuy Licensing Ltd. In fact, this is further proof that there was not intent to defraud anyone.

In the end there was no reason to do anything improper, and no one did. Defendant's claims are implausible and not tolerated in the law. They must now be rejected outright based on overwhelming proof of Barrister Walkers perjury and the supporting proof to the claim that nothing more than historical errors were being corrected, especially the joinder rights existing under Fed R. Civ. P. 20(a). [11]

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[10] Perhaps the most critical mistake in this case was CEO Fennelly's executing the name correction in March 2014 to eoBuy Licensing Ltd. At the time CEO Fennelly simply did not understand the effects of allowing Company Setup to make a substitution of eoBuy Licensing Ltd. as opposed to eoBuy Ventures Ltd. nor did he confer with Counsel prior to allowing them to file the name eoBuy Licensing Ltd. as opposed to eoBuy Ventures Ltd. Clearly, this fact is supported by the application to amend the complaint Fed Rule Civ. P. (15(a) **[DE 57-1 Page2 ¶3]** and add eoBuy Ventures Ltd. as a plaintiff under Rule 20(a). Had Counsel known of the switched name in advance of the submission he would have clarified it in the application to amend. This was not reckless, unreasonable, in bad faith or vexatious for the reason that the fact was unknown by Counsel until after Barrister Walker's Second Supplemental Declaration of April 11, 2014. **[DE 95.]**

[11] Typically, plaintiffs possess the right under Rule 20 to join defendants or institute separate actions. The Court has inadvertently exceeded its powers where it cast the need to impose sanctions in the theory that Plaintiffs would institute the action in another forum naming an additional entity. Clearly, and only for the reason of the deceptive claims of the defendants was the Court prodded into overlooking the fact that the **IP** exists and is owned by the shareholders of the former entity eoBuy Limited. The **IP** did not just simply disappear and as admitted by Barrister Walker under Irish Law the shareholders of eoBuy Limited have 20 years to restore the company and may continue this action as a matter of law either in Ireland or in the US. Moreover the 2008 Transfer Agreements are unopposed. Counsel can find no case law in opposition to this application of Rule 20 and every appellate case reviewed supports movants right of standing.

The fraudulent joinder claims made by defendants are in opposition with the law and facts. Any credibility which was given to Barrister Walker's testimony, must give way to the incontrovertible facts; CEO Fennelly's filing through Company Setup were lawful and on notice of the effective date of March 14, 2014.[12] The claimed intent to deceive was lacking by reason of the facts which could have been known or were recalled by CEO Fennelly at the time.

What is controlling on the matter is that under the circumstance all CEO Fennelly would have had to do, as he did, was move to join a party pursuant to Fed R. Civ. P. 20(a). He could have named Amdex or Laraghcon as the plaintiff, changed the name after the fact as he wished or even added himself individually. If he had done any of these acts there would be no issue before the Court.[13] Hence, there was no need to create a shame plaintiff.

Instead what he did was attempt to correct a trailing error related to historical record keeping and a failed named change caused by a defunct company.[14] There can be no genuine contest the transfers occurred as provided under the agreements ending in the name EoBuy Ventures Ltd as the

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[12] What becomes apparent is that if defendants had a claim against the viability of eoBuy Licensing Ltd's. right of standing it was required to challenge the matter in a Court in Ireland which has not been instituted, nor can it be. This explains the collateral attack in the US and the attempt to broaden the administrative powers of the CRO beyond its right to strike corporations off the CRO's rolls for noncompliance which in this case they have not done.

[13] The Fed R. Civ. P. 15(a) and 20(a) motions requested the correction or addition of eoBuy Ventures Ltd. as it was unknown-not recalled that the name had been rejected in 2008. Reflected in this filing is the truth associated with Exhibits "A" and "B" the transfer agreements. And more importantly is the implausibility as to Barrister Walker's testimony. We know now that Barrister Walkers testimony was not true. There was no way for CEO Fennelly to know of the name rejection by public notice whether it was in 2008 or 2014. This of course means two things. First, that when CEO Fennelly went to correct the name change to eoBuy Ventures Ltd. he was not being untruthful as explained he simply forgot it had been rejected and never followed up on the matter. Without knowing who did what, as to the requested name change in 2008, there can only be speculation as to what occurred. Second, when Company Setup filed the request for the name change to eoBuy Licensing Ltd., with an effective date of July 2008 on documents reflecting 2014-dates, they were obviously doing as they had been instructed by the CRO in March of 2014. **In fact, CEO Fennelly never had anything to do with the direct filings they were done by Company Setup.** Each and every document was submitted by them as the filings indicates.

[14] This was an error in judgment on the part of CEO Fennelly and miscommunications with the company dealing with the Irish Corporation Registry Office. Most importantly it could not support the claim for fraud. And, the opposite is true for the simple reason that all of the documents as filed were open to public inspection. To associate a fraudulent intent to the obvious scrutiny of Barrister Walker is frankly an insult to the intelligence of any reviewer of the facts, a corruption of the truth and under the circumstances meaning the now recanted testimony of Barrister Walker and the corrections of Mr. Lester misrepresentation of their interpretations of the filings and even Irish law. **See Point IV below.**

lawful owner of the **IP**.[15] And, even Defendants do not argue otherwise except to complain of their being a lack of notary in 2008, ***a fact which if it did exist would itself be suspicious*** and, that the document was in English a matter dependent on the fact that CEO Fennelly does not speak any Asian languages.[16]

These documents represent one of the very factors contemplated by Rule 59(e), that the proof necessary to overcome the claims at the hearing was unavailable to movants at the time so as to timely present rebuttal evidence or direct evidence on the matter. To correct these types of inequities Rule 59(e) provides the vehicle for review where the evidence was not available to the offended party.

The circumstances of the truth are that the documents provide proof at a point in time prior to August 15, 2008, proof which is definitive in nature as to the faithful belief of CEO Fennelly and Mr. Bruell the CEO of Amdex that the company they were transferring the **IP** into existed in 2008 under the name eoBuy Ventures Ltd. They were each unaware of the name being rejected. This is true for the reason that the defunct company Private Research Limited was in control of this information. Under the circumstances movants cannot give an explanation as to why the CRO rejected the name and the circumstances of that rejection.

The skeletal explanation of both Mr. Kennedy and Mr. Lester do nothing to reduce the speculation concerning the internal workings of the CRO as to any name rejection and who would have been notified. It was certainly not CEO Fennelly. It could only have been the set up company, Private Research Company. This is true for the reason that each and every filing was presented to the CRO by them.[17]

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[15] The arguments concerning what the **IP** was and was not is a factual issues and uncontested by a defendant party with knowledge. In any event the agreements content add even more credence to fact that they were created in 2008.

[16] Although defendants point to the lack of notary from 2008, and the fact that documents are in English, they fail to appreciate the attestations of their being executed in 2008 by Mr. Bruell. If CEO Fennelly had been attempting a fraud why not use EoBuy Licensing Ltd. The reason is simple he believed the company to be named eoBuy Ventures in 2008 when the documents were created. Why not simply change the documents after the fact; again, because there was no need to. If the Court continues to accept defendants' theory it must believe that everyone was conspiring with CEO Fennelly including Mr. Bruell- Company Setup and even Mr. Kennedy for his candid responses, response provided to the public prior to September 18, 2014.

[17] See Defendants Exhibit's and CEO Fennelly's declaration.

The filings only explain and support the actions taken by CEO Fennelly to update and correct the information in February 2014 to the name eoBuy Ventures Ltd. and not eoBuy Licensing Ltd. Not until he was notified of Barrister Walker's claims did he recall the name being rejected. Mr. Fennelly's declaration also explains why he forgot about the name change being rejected and why it was submitted to the CRO again in February 2014.[18]

This is an important point and establishes a portion of the implausibility of Barrister Walker's testimony and his credibility. If the CRO never published the name being rejected which we now know to be true how CEO Fennelly would have known the name eoBuy Ventures Ltd was rejected unless they notified him or the Private Research Limited. The point is he did not recall and his actions are in accord with precisely what he did having Company Setup submit the documents in the name eoBuy Venture Ltd.

To the best of his present recollection he was advised by an employee Private Research Limited, that the name eoBuy Ventures Ltd. was rejected by the CRO. Initially, he was waiting for someone from Private Research Limited to get back to him with the alternative names.

Instead, filings were continued to be made under the name for Laraghcon by Company Setup.[19] This continued until it was ultimately discovered that Private Research Limited never properly changed anything and simply continued to make filings under the name Laraghcon. [20]

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[18] What is consistent is the why would CEO Fennelly transfer the **IP** into a company named eoBuy Ventures Ltd. in 2008 if he did not believe the name to be valid and knew the name was rejected at the time. The simple answer is the miscommunication between him and Private Research Limited. He was unaware until months later and did not correct the matter until 2014. Six (6) years later he simply forgot and for the reason that Company Setup was unaware of the matter the name eoBuy Licensing Ltd. was submitted in March 2014.

[19] Additional proof of the overreaching claims of defendant through Barrister Walker may be found in his testimony that Private Research Ltd of Colliemore House "now trades under the name Company Setup". The is virtually no proof that "Setup is directly related to Private Research Ltd. and in fact the filing for Setup indicates it was a new company established in 2011. **[Exhibit "C"]** What's more, during cross examination Barrister Walker testifies that Laraghcon was no longer available. Of course it was not it could not have been it was never available to Company Setup for the reason that prior to 2011, it had already been set up and sold to CEO Fennelly.

[20] On this point it is conceded that the filings were not accurate. Presumably they were related to the miscommunication between the old and new companies. Although the filings were not accurate under either Irish law or California law the company has standing as a matter of law.

Which is more plausible, Barrister Walker's offered opinion that the company established in 2008 was never bought or sold although established in July of 2008 and that after Private Research Ltd. went out of business and Company Setup came into being in 2011 there was a sale six years later. Clearly, the sale had to have taken place at the very least prior to 2011.

Again, the facts of mistaken filing are consistent with the actions taken in 2014 and the name change to reflect the activities of August 2008. Indeed, they are even consistent with Barrister Walkers testimony. CEO Fennelly did not recall the name change and clearly both Private Research Ltd. and Company Setup completely dropped the ball. CEO Fennelly simply proceeded to do as he was instructed, update the filings to make the company compliant.

On this point he started with eoBuy Ventures Ltd. which is the name he believe the company to be using. Once advised of the name rejection he substituted the name eoBuy Licensing Ltd. The can be no real challenge to these facts assuming the information officers provided the information as reflected in Mr. Kennedy's response as was the practice until September 18, 2014.

Penalizing movants on the practices of a failed business-Private Research Limited-taken over by a new company, Company Setup, a company that compounded the filing errors where CEO Fennelly was simply trying to be compliant in following the instructions as he was advised is manifestly unjust. Had he understood the significance and notified Counsel in advance there would be no issue today.

The filings merely represent administrative compliance, nothing more. Any claim involving the existence of eoBuy Licensing Ltd. and its right of standing should have been first brought before a Court in Ireland and not imposed on this Court to determine Irish law in relation to the filings with the CRO. When properly aligned the claims of fraud lack a basic reason for them to have occurred in the first place. And more importantly, the facts when eliminating the perjured testimony of Barrister Walker prove there was no intent to defraud either the Court or defendants.

Point IV.

Movants Were Diligent in Their Attempts to Obtain the CRO Statements and the IP Transfer Agreements

Defense Counsel's argument that movants waited until September 10, 2014 to make inquiry to the CRO and that the CRO responses are neither new evidence nor do they change the outcome

of the Court's findings is specious in the context of any advanced notice that movants would have been aware of in defendants use of a witness who would offer false testimony to the very question posed by defense counsel, a question going directly to the claimed fraud asserted against CEO Fennelly and Counsel.

Counsel's September 10, 2014 through September 16, 2014 CRO inquiry post the hearing was in response to reasoning put together in the Court's findings while rendering its decision supported by Barrister Walker's testimony. **[DE 140-1.]** Prior to the Court issuing its decision the matters of questions posed to Mr. Kennedy were unknown for inquiry.

Any inquiry was not possible until after reviewing the order of September 2, 2014, and portions of Barrister Walker's testimony in conflict with the actions taken by Company Setup on behalf of CEO Fennelly. This fact alone, and ultimately finding that Barrister falsely testified[21] supports the additional basis recognized by the Ninth Circuit for appropriate reasons the Court is not limited merely to the "four "basic grounds" upon which a Rule 59(e) motion may be granted.[22]

Turning to the next argument related to the eoBuy Transfer Agreements as newly obtained evidence previously out of the reach of movants. Defendants argue that movants were aware of the documents and did not show that the assignments were not available or that there was insufficient time to obtain the documents prior to the hearing.

The documents are consistent with CEO Fennelly's claims and proof in opposition to the themed arguments offered by defendants. Despite due diligence movants could not have produced this evidence at a time sooner than which it was obtained. **[DE149-2, 3.]** Plaintiff placed the Court on notice of the need to enlarge the time to produce the documents held by witnesses who were unavailable for religious and scheduling reasons requesting video appearances which would have established facts which are consistent and in opposition of the errors imposed by defendants' misconduct. Most importantly, however, is the fact that the proof now available dispels any claims of recklessness, fraud or any intent to deceive the Court.

[21] Had Counsel been aware of the falsehoods in the testimony of Barrister Walker at the time of his testimony inquiry would have been made.

[22] Herron, 634 F.3d at 1111.

The case law cited by defense counsel on the issue of availability of this evidence *Universal* [23]is unpersuasive as the facts are entirely distinguishable. In that case the Court denied reconsideration for matters within the control of the attorneys in their preparation and use of an expert witness for a case with a lengthy litigation history. The request for reconsideration was to present evidence through the witnesses who were previously available during the prior hearings but not sought out prior to the hearing.

Here the opposite is true. Again, prior to the hearing movants timely notified the Court of the unavailability of producing witnesses and documents, the content of the documents and that due to scheduling and religious reasons the witnesses were not available except by video and otherwise requested a continuance. **[DE .]**

Point V.
The September 18, 2014 E-mail Was
Not Received by Counsel's Office

First and foremost, after an exhaustive and extensive search of seven (7) office and home office computers, and two laptops a search conducted by the firm's office manager Georgette Franzone with the assistance of Donna Chillari a Computer specialist there is no evidence that the e-mail of September 18, 2014 allegedly issued by Mr. Harry Lester an Assistant Registrar with the Irish Companies Registration Office was ever received by Counsel's office, opened or read. **[Defendants' Exhibit "A".]**

Without espousing a motive of suspicion for the lack of delivery-receipt of the September 18, 2014-email authored by Mr. Lester, other than of course the tactical advantage to have the Court believe Counsel ignored the corrections, if they are corrections, made by Mr. Lester as the claim is in his e-mail, that the responses in the-mail were directed to Counsel to notify the Court as early as September 18, 2014; and likewise as to any lack of motive which would exist to limit inquiry of the matters related to and correcting the alleged errors prior to defendants Response submissions and related to Mr. Kennedy, the information officer who answers telephone inquiries on a daily basis on behalf of the CRO and provided the very information given to Counsel concerning CRO

[23] *Universal Trading & Inv. Co v Dugsbery Inc.*, No. Co 8-03632CRD 2011

protocols and who can no longer speak with directly with counsel, other than these matters the strayed e-mail is not at all suspect, nor is the content of the missing e-mail inquiry made by Attorney Sugisaka or Barrister Walker of the CRO's Registrar Ms. Helen Dixon.

Of interest to the Court should be that missing from the e-mail dated September 18, 2014, is the banner heading which is attached in the first portion of the e-mail directed to Attorney Sugisaka but not the claimed dispatched e-mail to movants' Counsel.

The matter is noteworthy for the reason that the banner is substantially different in the portion of the e-mail allegedly dispatched to the e-mail address "DRDLinxs@aol.com," for the reason that it lacks several entries which would be anticipated to appear in a formal response including the address source in addition to the name change variation as a direct response to any e-mail sent by this office to the CRO. [24]

Why it was not sent as a direct response to the sender with the CRO reference numbers as all other responses were? **[DE 149-4-.]**

Turning to the e-mail's contents, the statements are at best backpedalling and parenthetically on a on an Olympic scale. The responses obviously panders to Barrister Walker's and Attorney Sugisaka's inquires. [25] It is amazing that despite Counsel's request for an official response to the questions posed to the CRO by him, to not one but two separate employees of the CRO, Counsel was given the exact information by both employees which was then presented by Mr. Kennedy and then formally corrected, by Mr. Lester. What does it mean?

Without wasting this Court's time turning to the core issue of the e-mail responses, responses which were not simply an unsolicited dispatched tendered to correct Mr. Kennedy's response in questioned recast to different questions posed by Attorney Dollinger, the responses

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[24] It may be that the addition of the "," at the end of the e-mail address caused AOL, Attorney Dollinger's Internet service provider, to reject the delivery or stall it in the CRO's system. However, in either event it should have appeared as not delivered according to AOL. Upon inquiry to AOL, AOL was unable to provide information concerning the delivery without a proper banner heading from the sending source.

[25] There is no indication whatsoever to believe that attorney Sugisaka knew the e-mail was not sent or received by Counsel. The reference to her is only to the e-mail dispatched inquiry by her on September 17, 2014, although, it is curious as to what claims-demands were made of Ms. Dixon or requests for clarity. Apparently, for some reason neither the Court nor Counsel is privy to that e-mail and its content.

point to one indisputable conclusion, even if Mr. Lester's e-mail provides corrections in Mr. Kennedy's response when inquires to the CRO were made, that is prior to September 18, 2014, all who inquired would have been relying on the very information that was offered by the CRO information officers manning the telephones providing information as understood prior to that date. **[DE 149-4.]**

The objective effect of what the public was told can be seen in the precise details of what was done by Company Setup for eoBuy Licensing Ltd. Clearly, the CRO does ascribe fault to the filings. Mr. Lester never once suggest that a fraud was being perpetrated by the filing of the name change because he cannot. All one need to do is look at the sequence of the filings offered by Mr. Kennedy.

In each instance the documents provided by Mr. Kennedy are tied to a date at least to the year 2013. And, he makes no attempt to raise the filing to the occasion of any fraud.

The Court's statement that Barrister Walker had eliminated the fact the forms were available in 2008 as a challenge by Counsel or an attempt to show through the cross examination of Barrister Walker that they were actually executed in 2008 is in error.

Just the opposite is true Barrister Walker testified that they were unavailable in 2008; movants agree. The fact is thation each instance of the 2014 filings the documents as dated appear with at least the years 2013 on their face. This is definitive proof that the flings were not intended to be fraudulent. If CEO Fennelly were attempting a fraud why not obtain an old document one from the CRO's Website whiteout the information and use it. Now that would be a fraud. Just the opposite is true.

CEO Fennelly used documents which obviously reflect at least the year 2013. The filings show the Resolution for name change form and amended articles of Inc. made to have an effective date of March 14, 2014.

The very sequence was open to the public and could not possibly support the claimed fraud. But for the false state of mind imposed by Barrister Walker that CEO Fennelly must have been lying when he said he forgot the CRO had rejected the name change as it would have appeared in the public filings and the implausible suggestion of fraud in the filing of this Court could not have found an act of fraud in either fact or the law.

Finally, the fact ha the filing are out of sequence related to the officers and member was the direct result between failure of Private Research Ltd. and Company Setup. The filings made were for corrections related to their errors. The Transfer Agreements help establish that this all occured

Conclusion

What defendants suggest is that the Court not judge movants claims on the merits applying the law as required under Fed Rules. Civ. 1927, as well as Rule 20(a) and disregard the indisputable perjury of Barrister Walker as well as never addressing the fact that movants had already notified the Court of their inability to control the delivery of the documents due to travel and religious observations by third-parties. **[DE 132.]**

The Court's findings that the Plaintiff's CEO Conor Fennelly and Attorney Douglas R. Dollinger submitted fraudulent documents and false declarations which actions amount to bad faith in vexatiously-recklessly multiplying the proceedings before the Court is in error of the law and facts of this case, and upon reconsideration this court should reverse itself to avoid manifest injustice and prevent unjustified and irreparable injury to Plaintiff Indiezone, Conor Fennelly and their Counsel. **[DE 145.]**

LAW OFFICES OF DOUGLAS R. DOLLINGER

Dated: October 14, 2014

Douglas R. Dollinger, Esq., NY Bar No. 2354926
Appearing *Pro Hac Vice*
50 Main Street-Suite 1000
White Plains, New York 10606
Tel: 845.915.6800
Fax: 845.915.6801
E-mail: ddollingeresq@gmail.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with the Rules of Federal Procedure, on the this date October 14, 2014, a true and correct copy of the foregoing document was delivered to Defendants, by and through the ECF System to their record counsel.

__ /S/ *Douglas R. Dollinger*

Douglas R. Dollinger,Esq (5922)
NY Bar No. 2354926
50 Main Street, Suite 1000
White Plains, New York 10606
Tele: 845.915.6800
Facs: 845.915.6801
E-mail ddollingeresq@gmail.com
Attorneys for Plaintiff